

REMARKS

In an Office Action mailed April 26, 2006, all currently pending claims (claims 1-39) were subject to a restriction requirement under 35 U.S.C. § 121. Applicants respectfully traverse and request reconsideration.

Examiner has alleged that the instant application discloses eleven patentably distinct species as follows: Species I: FIG. 2; Species II: FIG. 3; Species III: FIG. 4; Species IV: FIG. 5; Species V: FIG. 6; Species VI: FIG. 10; Species VII: FIG. 15; Species VIII: FIG. 16; Species IX: FIG. 17; Species X: FIG. 18; and Species XI: FIG. 19. Further, Examiner asserts that no generic claim is currently pending. Applicant respectfully disagrees that no generic claims are presented. In particular, Applicant notes that Species VII-IX are all related in that they are directed to embodiments in which electrodes are placed on a surface structure of the eye (FIGs. 15-17; instant specification, paragraphs [0074] – [0076]) and the complementary electrode is not placed on the surface of the eye (instant specification, paragraph [0074], last sentence). This is commensurate with the scope of claims 1 (apparatus) and 23 (method) in which at least one stimulating electrode is placed on a surface structure of the eyeball and at least one electrode is placed substantially distant from the eyeball. As such, Applicants respectfully submit that claims 1 and 23 are generic to Species VII-IX and that the restriction is therefore improper.

In this same vein, Applicant respectfully submits that Species X and XI are likewise related in that they describe embodiments in which stimulating and return electrodes are both configured for contact with surface structures of the eyeball (instant specification, paragraphs [0077] – [0079]). Note that FIG. 12 of the instant application illustrates this generic embodiment. In this light, both Species X and XI fall within the scope of claims 11 (apparatus) and 27 (method) to the extent that those claims recite stimulating and return electrodes on surface structures of an eyeball.

Furthermore, contrary to M.P.E.P §§ 803 and 808.02, there has been no showing sufficient to establish the need for restriction, particularly, there has been no showing that a serious burden will be placed on the Examiner if restriction is not required. Indeed, pursuant to these M.P.E.P sections, the restriction fails to provide any explanation that the alleged patentably distinct species are within separate classifications, have acquired separate status in the art or are in different fields of search. For this reason, Applicant submits that the restriction requirement is improper and respectfully request withdrawal of the restriction requirement.

Notwithstanding the above, in order to comply with the restriction requirement, Applicant elects Species VII and claims 1-10 and 23-26 readable thereon in the event that the restriction requirement is maintained.

In light of the foregoing comments, Applicants respectfully submit that the instant application is in condition for allowance and request that a timely Notice of Allowance be issued in due course.

Respectfully submitted,

Vedder, Price, Kaufman &
Kammholz, P.C.



Dated: 5-24-2006

By: _____

Christopher P. Moreno
Reg. No. 38,566

222 North LaSalle Street, Suite 2600
Chicago, Illinois 60601
(312) 609-7842 (Direct)
(312) 609-5005 (Facsimile)